

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

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|-------------------------------|---|----------------------------|
| John Bernard Robinson, |) | |
| |) | |
| Petitioner, |) | C.A. No. 1:09-cv-01977-JMC |
| |) | |
| v. |) | OPINION & ORDER |
| |) | |
| Anthony Padula, Warden of Lee |) | |
| Correctional Institution, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

This matter is now before the court upon the magistrate judge's Report and Recommendation [Entry # 35], filed on August 3, 2010, recommending Respondent's Motion for Summary Judgment [Entry # 22] be granted on the basis that Petitioner's filing is untimely and that this action be dismissed with prejudice. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the magistrate judge's recommendation without a recitation.

STANDARD OF REVIEW

The magistrate judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the magistrate judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

DISCUSSION

Petitioner John Bernard Robinson is a *pro se* state prisoner petitioning for a writ of habeas corpus under 28 U.S.C. § 2254. Specifically, Petitioner alleges ineffective assistance of counsel, prosecutorial misconduct, and plain error as the grounds for his petition for a writ of habeas corpus.

After receiving the magistrate judge's Report and Recommendation on the pending motions, Plaintiff timely filed objections. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the magistrate judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that the majority of Petitioner's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. However, the court was able to discern Petitioner's objection to the magistrate judge's finding that Petitioner's filing was untimely.

Principles of equitable tolling may, in the proper circumstances, excuse a petitioner's failure to file a timely habeas corpus petition. *See Harris v. Hutchinson*, 209 F.3d 325, 328 (4th Cir. 2000). However, equitable tolling does not extend to ordinary claims of excusable neglect. *See Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003). The principle is appropriately applied when, "but only when, 'extraordinary circumstances beyond [the petitioner's] control prevented him from complying with the statutory time limit.'" *Id.* Petitioner's filing is approximately ten months overdue, yet he

has offered this court no explanation or reason why he could not file his petition for writ of habeas corpus within the statutory limitation. Therefore, after a thorough review of the magistrate judge's Report and Recommendation and the record in this case, the court adopts the magistrate judge's Report and Recommendation and incorporates it herein.

It is therefore **ORDERED** that Respondent's Motion for Summary Judgment [Entry #22] is granted, and the Petition is dismissed with prejudice.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

September 15, 2010
Greenville, South Carolina